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10/582,302

06/08/2006

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EXAMINER

SINGH, SUNIL K

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/582,302  
Filing Date: June 08, 2006  
Appellant(s): OKAWA ET AL.

\_\_\_\_\_  
Raymond R. Tabandeh  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 07/27/2010 appealing from the Office action mailed 03/16/2010.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

**NEW GROUND(S) OF REJECTION**

Claims 42-49, 50-60, and 77-80 rejected under 35 U.S.C. 102(e) as being anticipated by Katsuda et al. (US 2005/0003323).

**(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

**(8) Evidence Relied Upon**

2005/0003323	Katsuda et al.	1-2005
6,607,384	Nakanishi	8-2003

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

**NEW GROUND(S) OF REJECTION**

1. Claims 42-49,50-60, and 77-80 rejected under 35 U.S.C. 102(e) as being anticipated by Katsuda et al. (US 2005/0003323).

Katsuda discloses a dental device that includes: an instrument (A) having a forward end (4) that is equipped with a diagnostic/treatment tool that is **capable** of being used for treating/diagnosing a lesion in an oral cavity; a light radiating unit (1) having a light source (2a) for emitting excitation light and a light source (2b) capable of emitting illumination light [0169]; wherein the wavelength of excitation light is selected from 405 +/- 50 nm [0169]; wherein the radiating unit is **capable** of simultaneously radiating excitation light and illumination light [0111]; wherein the illumination light is white light [0017]; wherein the light sources are laser diode (LEDs); wherein the light source is capable of variably adjusting a light emission level of the light source (via filters and choppers); wherein the radiating unit is capable of radiating light at one wavelength by switching between the plurality of light sources; wherein the light source is selected from halogen lamp [0095]; wherein the light radiating unit includes an optical filter; wherein the light's wavelength is capable of being selected by replacing filter with another filter

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having different characteristics; wherein the radiating unit (1) includes a radiating part from which excitation light and/or illumination light are radiated toward the lesion (Fig. 7); wherein the radiating part is capable of being disposed near a mounting portion of the diagnostic tool; wherein the device includes a power supply for driving the light sources [0108]; wherein the light emitting devices are capable of being mounted so as to encircle the diagnostic/treatment tool; wherein the radiating unit includes a plurality of light sources (2a,2b,2c) positioned at the forward end (Figs. 44, 45) and is capable of switching between plurality of light sources [0111]. The examiner notes that although Katsuda does not specifically state that the forward end of the dental device is a diagnostic or treatment tool, this is a functional limitation. It is the examiner's position that the tip of the device of Katsuda can be used as a scaler, a dental treatment tool typically used in dentistry to scrape off plaque and tartar. It is well known in the art to make dental scalers of plastic and Katsuda teaches that the element (12) located in the tip of the dental device can be made of plastic. As the forward end of dental device of Katsuda is made of a material durable enough to scrape off dental tartar from an oral cavity, it is capable of use as a dental treatment tool.

### ***Claim Rejections - 35 USC § 103***

2. Claims 61 and 64-75 rejected under 35 U.S.C. 103(a) as being unpatentable over Katsuda et al. in view of Nakanishi (US 6,607,384).

Katsuda discloses the invention substantially as claimed except for a detachable adapter having LEDs and a filter.

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Nakanishi teaches a detachable adapter (60,50) that includes various LEDs. It would have been obvious to modify Katsuda to include the claimed adapter, as taught by Nakanishi, since such a device is well known in the art. Furthermore, it would have been obvious to one having ordinary skill in the art to modify Katsuda/Nakanishi to include an adapter with filters in order to filter out light from the LEDs in Nakanishi's adapter.

#### **(10) Response to Argument**

The Examiner notes that the New Grounds of rejection was just to clarify the Examiner's position that the tool is not capable of being equipped by a treatment tool but rather is equipped with a tool that is capable of being used for treating a lesion in the oral cavity.

In regards to Appellants arguments that Katsuda does not teach a device equipped with a treatment tool, the Examiner respectfully disagrees. The Appellant has not claimed any structure to the treatment tool but rather just a tool used for treating a lesion in the oral cavity. The Examiner points out that the tip of the device can be used as a scaler which is typically used in dentistry to scrape off plaque and tartar. Katsuda further teaches that the element (12) located in the tip can be made of plastic. Plastic is a well known material used for dental scalers and thus is capable of being durable enough to scrape off dental tartar from an oral cavity. Therefore, it is the Examiner's position that Katsuda discloses a device capable of being used for treating an oral lesion in the oral cavity and therefore meets the limitation as claimed.

The Appellant further argues that Katsuda does not disclose a device that excites wavelengths in 405 +/- 50 nm and 700 +/- 100 nm. However, the Examiner respectfully disagrees. The Appellant is only claiming that the excitation wavelength could be either in the 405 +/- 50 nm **or** in the 700 +/- 100 nm range, not both. The Examiner directs the Appellant to paragraph [0099], where Katsuda clearly discloses the use of excitation light emitted in the claimed ranges. Katsuda further discloses that a filter is used to cut the excitation light in the same range the Appellant is claiming and therefore Katsuda meets the limitation as claimed.

The Appellant further argues that Katsuda does not teach a device that switches from different light sources to radiate at different wavelengths. However, the Examiner again respectfully disagrees. Katsuda teaches in para [0111] that a switch button is sequentially pressed in order to switch between a light source in the infrared range, a light source in the red range and a light source in the white light range. Katsuda further describes an his invention as having a plurality of switches that can switch from various light sources that emit at different wavelengths (see paragraphs[0122]-[ 0123]).

Therefore, it is the Examiner's position that Katsuda does in fact meet the limitations as claimed.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.



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Respectfully submitted,

/Sunil K Singh/  
Examiner, Art Unit 3732

**A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:**

/Angela D Sykes/

Director, Technology Center 3762

Conferees:

/Cris L. Rodriguez/  
Supervisory Patent Examiner, Art Unit 3732

/Janet C. Baxter/  
TC 3700 TQAS